IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5708 OF 2005

Ananta Narayan Darwatkar ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Abhaykumar Apte for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 14,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The offence registered against the Applicant and the co-accused is under Sections 363, 302 read with Section 34 of the Indian Penal Code. Investigation is completed and the charge sheet has been filed.

2. The application made by the Applicant in Sessions Court has been rejected firstly on the ground that the accused persons were last seen together with the deceased and secondly the motor cycle used for commission of offence has been seized and the third reason is the criminal background of the Applicant-accused.

3. The Advocate for the Applicant submitted that there is no evidence to show that the Applicant was last seen with the deceased. He submitted that there is no recovery made at the instance of the Applicant and therefore after filing of the

charge sheet he is entitled to be enlarged on bail. He submitted that there is no direct evidence available against the Applicant.

4. The learned A.P.P. relied upon the statements of the witnesses viz. Jainu Abdul Shaikh and Kum.Jenifer Alexander alias Dollar both of whom are minors. He submitted that the evidence shows that both the accused were last seen together with the deceased. He produced before me the chart showing the offences registered against the Applicant at Swargate Police Station in Pune.

5. Perusal of the statements of the said witnesses show that the witnesses saw the Applicant going towards the direction of Shankar Temple. Thereafter, co-accused Sunil informed the deceased that the Applicant had called her near Mango tree and therefore the co-accused Sunil instructed the Applicant to come near Shankar temple. The co-accused Sunil walked up to the Shankar temple. Both the witnesses have stated that thereafter the co-accused Sunil and the deceased went away by the motor cycle of the Applicant. The witnesses have not stated that the Applicant was with the deceased. Thus, at this stage, it appears that the evidence of last seen together with the victim is against the co-accused Sunil. It is not in dispute that there is no recovery made at the instance of the present Applicant. The recovery of motor cycle is at the

instance of co-accused Sunil. In view of this aspect the learned Sessions Judge was not right when he observed that no explanation has been offered by the Applicant. Admittedly, there is no other evidence available against the Applicant.

6. Criminal antecedents against the Applicant would have been relevant provided there is some material against the Applicant. However, as stated earlier there is no such material available. In my view the Applicant has made out a case for grant of bail subject to stringent conditions. Till the conclusion of the trial the Applicant will have to restrained from entering the City of Pune considering his criminal antecedents and for protection of the witnesses.

7. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.254 of 2004 registered with Swargate Police Station, Pune subject to furnishing a personal bond of Rs.30,000/- (Rupees thirty thousand only) with one or two local sureties in the like amount.

ii) Bail is granted subject to the condition the Applicant will not enter the area falling with the jurisdiction of the Municipal Corporation of City of Pune till the conclusion of trial except for attending to the dates fixed for trial.

iii) This order granting bail will be given effect only after the Applicant furnishes to the Investigating Officer detailed address of place of residence where he proposes to stay after he is enlarged on bail.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

v) Bail is granted subject to the condition that the Applicant will report once in a week to the local police station within the jurisdiction of which the Applicant is staying. week.

vi) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) Parties to act upon an authenticated copy of this order.

JUDGE